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Supreme Court of the United States

OCTOBER TERM, 1939

No. 567.

HARRY M. VEIX,

Appellant,

vs.

SIXTH WARD BUILDING AND LOAN ASSOCIATION OF NEWARK, NEW JERSEY, A Corporation,

Appellee-Respondent.

Appeal from the New Jersey Supreme Court.

BRIEF OF STATE OF NEW JERSEY

by

LOUIS A. REILLY, COMMISSIONER OF BANKING AND INSURANCE OF NEW JERSEY, AS *AMICUS CURIAE.*

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SIXTH WARD BUILDING AND LOAN ASSOCIATION OF NEWARK, NEW JERSEY, A Corporation,

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BRIEF OF STATE OF NEW JERSEY,

as *amicus curiae*.

I.

Preliminary Statement.

These proceedings seek to test the constitutionality of a statute which governs the relationship between building and loan associations of the State of New Jersey and their members in respect to withdrawals of shares. The Commissioner of Banking and Insurance of New Jersey is charged by law with the duty of supervision over such associations. Revised Statutes, Title 17, Chapter 12. Where it appears to him that an association is in an unsafe or unsound condition, or that it is unsafe or inexpedient for it to continue business, he may take possession of its business and affairs. R. S. 17:12-65; 17:12-67. Reversal of the decision of the court below will cause a complete change in the standards applied by the Commissioner in determining his course of conduct in respect to a particular association.

Since, as of December, 1938, (the most recent date for which figures are available) there were 1327 associations in New Jersey, having 793,091 members, with investments aggregating $1,034,000,011.00 the interest of the State in the present litigation is readily apparent. (Report of the Commissioner of Banking and Insurance to the Legislature of New Jersey as of December 21, 1938). It is for this reason that this brief is presented to the Court in the name of the State of New Jersey as *amicus curiae.*

The enactment, in 1937, of a revision of all the statutory law of ageneral nature in effect in the State of New Jersey has resulted in an apparent confusion which requires some clarification.

At the time the plaintiff below became a member of the respondent association, the respondent was governed by the provisions of an act of the New Jersey legislature entitled "An Act concerning building and loan associations" (Revision of 1925), Chapter 65, Laws of 1925. That act provided, among other things, that—

> "* * * nine or more persons * * * may become an incorporated association for the purpose of assisting each other * * * in acquiring real estate * * * and for the further purpose of accumulating a fund, to be repaid to its members, subject to the right of earlier redemption * * * when the funds of such association shall amount to a certain sum per share, to be specified in the certificate of incorporation." P. L. 1925, Chapter 65, Section 1, p. 189.

The "earlier redemption" referred to in Section 1 was clarified by Sections 49 and 52, as follows:—

> "The shares of every such association of this State * * * may be withdrawn by the holder at any time, by giving such written notice as may be provided for in the constitution or by-laws, not to ex-

ceed thirty days * * *." P. L. 1925, Chapter 65, Section 49, page 211.

"Withdrawals from any such association shall be paid in the order in which notices thereof shall have been received, but not more than one-half of the receipts of any one month shall be required to be used for the payment of withdrawal claims, without the consent of the board of directors, until the oldest of such claims then unpaid shall have been on file for a period of six months; but in no case shall payment be postponed for a period longer than six months from the date of such notice, and any member who has given the said notice may sue for and recover the withdrawal value of his shares in any court of competent jurisdiction, if the same is not paid in six months from the date of the giving of said notice of withdrawal." P. L. 1925, Chapter 65, Section 52, page 212.

In 1932, and again in 1935 and 1936, Section 52 of Chapter 65, P. L. 1925 was amended. In 1937, a complete revision of all the statute laws of the State of New Jersey of a general and permanent nature was enacted, and all prior laws repealed. P. L. 1937, Chapter 188. Vested rights were, of course, saved. R. S. 1:1-11.

Section 52 of Chapter 65, P. L. 1925, as amended in 1932, 1935 and 1936 was carried into the Revised Statutes, and now appears as R. S. 17:12-53.

The answer of the respondent, the defendant below, pleaded the provisions of R. S. 17:12-53 in defense to the action (Record; Page 5). Despite this, however, the issue seems to have been submitted by the parties upon the basis of Chapter 102, P. L. 1932, and seems so to have been decided by the Court below. See *Veix* v. *Sixth Ward Building and Loan Association* 123 N. J. L. 356, 357, where the Court says, (Record, page 13),

"The plaintiff-appellant says that the 1932 statute is invalid and the burden of the argument is that that statute is unconstitutional because it impairs the obligation of the contract, but we have already held to the contrary in the case of *Bucsi* v. *Longworth Building and Loan Association* 119 N. J. L. 120, and *Rocker* v. *Cardinal Building and Loan Association* 119 *Id.* 134, and this appeal is entirely controlled by our holding in those cases."

For the reasons stated, this brief will concern itself solely with the question of the constitutionality of Chapter 102, Laws of 1932.

II.

ARGUMENT.

Chapter 102, Laws of 1932 of the Laws of New Jersey is a valid enactment, and within the constitutional powers of the Legislature of the State of New Jersey to enact.

Before presentation of argument, it is essential that the status of the appellant as a member of the respondent be clarified. The appellant subscribed for and is now the holder of what, at issue, were known as "paid-up" shares, defined as "shares the maturity value of which shall be paid in advance." Chapter 65, P. L. 1925, Section 73, page 223. By Section 5 of Chapter 65, P. L. 1925, page 191, it was provided that—"The members or shareholders of any such association shall be those to whom its shares shall be issued • • •." Section 74 provided that "all members shall occupy the same relative status as to debts and losses of such association," and that "paid-up shares shall only be surrendered and withdrawn on the same terms and under

the same conditions as provided in the constitution for the surrender and withdrawal of installment shares * * *." Section 5 provided that "when shares mature and are paid, the subscribers thereto or owners thereof shall cease to be members * * *."

The status of the appellant as a member was, therefore, the same as that of any other member of the respondent. His holding of paid-up shares gave him no preference or priority of withdrawal: *Rocker* v. *Cardinal B. & L. Ass'n.*, 119 N. J. L. 134.

The complaint discloses that the appellant subscribed for shares upon two separate dates: October 1, 1928 and October 2, 1929 (Record, pages 1 and 4). At that time, the conditions precedent to withdrawal were those already noted. In August, 1932, appellant filed notice of withdrawal (Record, page 2). In the interim, on April 28, 1932, Chapter 102, Laws of 1932, became effective. The provisions of both enactments are set forth in full at other points in this brief, but for convenience of comparison, a synopsis in parallel columns is here given, insofar as the provisions are deemed material:

Ch. 65, P. L. 1925, Sec. 52.	Ch. 102, P. L. 1932.
1. Withdrawals shall be paid in the order in which notices thereof shall have been received.	1. Identical provision.
2. Not more than one-half of the receipts of any one month shall be required to be used for the payment of withdrawal claims, without the consent of the board of directors, until	2. Identical provision; adds a definition of what shall constitute monthly receipts.

Ch. 65, P. L. 1925, Sec. 52.	Ch. 102, P. L. 1932.
3. The oldest of such claims then unpaid shall have been on file for a period of six months; in no case shall payment be postponed for more than six months.	3. Provision eliminated.
4. No similar provision.	4. Where fund available for payment of withdrawals is insufficient to pay all withdrawals, priority of payment of any one member shall be to the extent of $500.00 to each member in order of priority until fund is exhausted.
5. No similar provision.	5. No withdrawals shall be paid if the funds available for the payment of matured shares are insufficient to pay all matured shares, the payment of which has been requested within thirty days after maturity.
6. Members may sue and recover the withdrawal value of shares if payment is not made in six months of giving notice of withdrawal.	6. Provision eliminated. No member may sue to recover withdrawal value so long as funds are disbursed as in the act directed.

The appellant contends that, by reason of the changes in the statute, he has been deprived of property without due process of law, the obligation of a contract made by him has been impaired, and he has been deprived of the equal protection of the laws, all contrary to the provisions of the Constitution of the United States, and its Amendments.

Whether, however, withdrawal is an absolute right or a qualified privilege is by no means clear. Section 52 of Chapter 65, Laws of 1925 appears unambiguous upon its face. Standing alone, it apparently confers an absolute right to sue upon the expiration of six months from the date of demand for withdrawal. But it is elementary that, in construing statutes, the Court will not look only to a particular clause, but will consider the entire enactment, in order to ascertain the intention of the legislature. *Costanzo* v. *Tillinghast*, 287 U. S. 341; 77 L. ed. 350; *May* v. *Board of Commissioners*, 111 N. J. L. 166. The particular provision must, therefore, be read in the light of the entire statute, and must be so construed that it will harmonize with the intention of the legislature as expressed in the entire act.

The New Jersey Court of Errors and Appeals has not been silent upon the relationship between Chapter 65, Laws of 1925 as a whole and the provisions of Section 52. In *Bucsi* v. *Longworth B. & L. Ass'n.*, 119 N. J. L. 120, the Court said (p. 125):

> "But the statutory right of a member to withdraw from membership and to receive the withdrawal value of his shares and the statutory privilege to sue for the amount if not paid within the time named in the statute, is based upon and forms a part of the general plan that each member is entitled to equal participation in the assets, and the statute does not contemplate that the privileges named shall be exercised to defeat equal participation, but that the spirit of the statute being equal participation, the paramount equity is equal participation at all times."

When it is remembered that termination of membership came not upon demand for withdrawal, or upon the expiration of six months from demand for withdrawal, but upon

payment to the member (Chapter 65, P. L. 1925, Section 5, *supra*), and that, by preexisting law, all members were on a parity as to debts and losses, the provisions of the withdrawal sections of the statute assume their true significance, and the full force of the language last quoted becomes apparent. *The privilege of suit conferred by Section 52, Chapter 65, P. L. 1925, is modified by the qualification that it may be exercised by a member only so long as it does not defeat or destroy that fundamental mutuality which is the entire basis for the relationship of members between themselves.* The 1932 amendment against which the present attack is made, effected no change in fundamental relationships. The incidents of membership were the same before and after the amendment, which was no more than legislative recognition and sanction of the situation that had theretofore obtained.

It must be remembered too, that Section 52 of Chapter 65, P. L. 1925 indicated the fund from which withdrawal demands were to be paid. Where such a fund is indicated, and judgment is entered, execution will be controlled to permit satisfaction from that fund only. Compare *Intiso* v. *Metropolitan Savings and Loan Association*, 68 N. J. L. 588 (a case which arose prior to the enactment of the statutes here discussed). See also annotation in 98 A. L. R. at page 99.

Under the circumstances, a conclusion that Section 52, Chapter 65, P. L. 1925 did not confer an absolute, or inalienable vested right to bring suit for the withdrawal value of shares is altogether reasonable. The Court of Errors and Appeals of New Jersey could justifiably have based its conclusions upon that ground, in which event its decision upon the force and effect of the statute would be final. *Hicklin* v. *Coney*, 290 U. S. 169, 78 L. ed. 247. But, while noting the interdependence of the various sections

of the act, and while commenting upon the conditional and qualified nature of the withdrawal right (*Bucsi* v. *Longworth B. & L. Ass'n, supra,* at page 125), the Court chose to consider the constitutional questions involved. It is submitted, however, that there is a sufficient non-federal ground for supporting the decision of the Court below.

B.

Assuming that the right to withdraw is a vested right, it by no means follows that the legislation subsequently enacted cannot lawfully affect it.

Building and loan associations are quasi-public in nature and are affected with a public interest. *Bucsi* v. *Longworth B. & L. Ass'n, supra; Hopkins Federal Savings and Loan Association* v. *Cleary,* 296 U. S. 315, 80 L. ed. 251; *Treigle* v. *Acme Homestead Association,* 297 U. S. 189, 80 L. ed. 575. As such, they are subject to a degree of regulation and supervision which would be unnecessary and unreasonable in the case of a purely private corporation. *Treigle* v. *Acme Homestead Association, supra.* The field within which the legislature may lawfully move in affecting contracts made with such institutions has been marked out by this Court. In *Treigle* v. *Acme Homestead Association, supra,* it was said (80 L. ed. at page 580),—

> "* * * we recognize that these associations, like banks and public service companies, are subject to a degree of regulation which would be unnecessary and unreasonable in the case of a purely private corporation. But laws touching building and loan associations, like those affecting banks or utility companies, must be confined to purposes reasonable connected with the public interest as distinguished from purely private rights. The legislature has no greater power to interfere with the private contracts of such

corporations, or the vested rights of their stockholders as such, under the pretext of public necessity, than it would have to attempt the same ends in the case of a private corporation. Though the obligations of contracts must yield to a proper exercise of the police power, and vested rights cannot inhibit the proper exertion of the power, *it must be exercised for an end which is in fact public and the means adopted must be reasonably adapted to the accomplishment of that end and must not be arbitrary or oppressive* * * *." (Italics supplied.)

It is submitted that the purpose of Chapter 102, P. L. 1932 is, in fact, public; that the means adopted to achieve that purpose are reasonable; and that its provisions are neither arbitrary nor oppressive.

A full discussion of the end sought to be achieved by the enactment of the statute may be found in *Bucsi* v. *Longworth B. & L. Ass'n, supra.* The Court there notices judicially the huge sums of money invested in and by building and loan associations of this State. Forced liquidation, the inevitable consequence of an unfettered right to bring suit for withdrawals, would further depress an already seriously depressed real estate and financial market. The Court says (*Bucsi* v. *Longworth B. & L. Ass'n, supra,* at pages 129 and 130):—

"* * * Mere contemplation of such a situation forces the conclusion that there was a tremendous and grave public interest involved. As long as the privilege of suit was unabridged potential insolvency was present as to many and actual insolvency of most necessarily would follow as a matter of course.

The liquidation of the assets of these associations having a value of approximately one billion dollars would have destroyed the stability of and the market for first mortgages on real estate and other types

of investment that are prescribed as legal investments by statute for banks, trust companies, insurance companies and other institutions and fiduciaries and to which classes of legal investments the funds of building and loan associations are restricted by law.

The value of real property and real estate mortgages was largely gone for the time being and liquidation could only be had on ruinous terms, but the values were susceptible of ultimate return. The result would be chaos and even under orderly liquidation of this vast amount of assets the ultimate return of these values would be indefinitely postponed if not irreparably impaired. The state has an important interest in the maintenance of real estate values from the major base upon which its tax structure and its various political subdivisions rests. The stability of the tax base over a term of years is vitally important to the state.

The structure of the tax base and the widespread membership in building and loan associations and the fact that the value of the real estate mortgages and real property owned by such association represents a high percentage of the total value of all taxable real estate in the state, *creates a situation which is peculiar to this state* * * *." (Italics supplied.)

The graphic word picture painted by the Chancellor concludes, it is submitted, any inquiry whatsoever into the object sought to be achieved by the provisions of Chapter 102, P. L. 1932. There can be no doubt that the act was passed for an end which was and is, in fact, public; the preservation of financial institutions the collapse of which would bring ruin upon the State.

It is further submitted that the means adopted to achieve that end are reasonably adapted to its accomplishment. Building and Loan associations have virtually no creditor obligations. *Bucsi* v. *Longworth B. & L. Ass'n,*

supra, at page 128. The only source of the threat to the public interest reviewed by Chancellor Campbell in the *Bucsi* case (cited at length, ante) lay in the members of associations themselves. They had within them the power to cause the catastrophe which the statute sought to prevent, possessing, as they did, the right to sue. *A modification of the power to sue was not only the most reasonable means, but the only effective means of accomplishing the purpose of the statute.* It is difficult to conceive what other means could have been adopted without serious disruption of the economic forces of the State, with the consequent social repercussions.

The quality of reasonableness is susceptible of further demonstration. *The right to sue is not irrevocably lost. It is deferred or postponed.* The device not only prevents public catastrophe, but preserves the mutual rights of withdrawing members as between themselves. One-half the monthly receipts are still available for distribution to withdrawing members. It is true that priority of payment to any one withdrawing member, is limited to $500.00 in any one month, where funds are not available for satisfaction of withdrawal demands in full. But it is submitted that one who has entered upon a mutual undertaking, such as membership in a building and loan association, cannot be heard to complain that he is not permitted to secure an advantage over other members similarly placed. It is further submitted that, where a billion dollars is involved (*Bucsi* v. *Longworth B. & L. Ass'n*, *supra*, at p. 127), it is in the interest of the State that the distribution of the fund be as widespread as possible, in order that a maximum sum be freed to circulate in currency. Rotation of payment, as provided by Chapter 102, P. L. 1932, effects a wider distribution of money available for employment in purchases.

There remain for consideration two aspects of Chapter 102, P. L. 1932. Whether preferment of matured shares over withdrawal demands is reasonably adapted to a public end, or whether private rights only are affected, is debatable. The statute has been found to be free of arbitrariness on this ground by the Court of Errors and Appeals of New Jersey. *Bucsi* v. *Longworth B. & L. Ass'n, supra; Rocker* v. *Cardinal B. & L. Ass'n,* 119 N. J. L. 134. Should this Court determine that it is not bound by that decision in this regard, it is submitted that the appellant, not having shown that the particular provision has been invoked to his prejudice, may not raise the point here. The consideration of the constitutionality of a statute will be limited by the exact case presented. *State* v. *Sutton,* 83 N. J. L. 46; *affirmed* 87 N. J. L. 192, 244 U. S. 258, 61 L. ed. 1117. Whether any shares matured and were paid in preference to the appellant's demands, does not appear. Furthermore, the invalidity of the particular provision need not affect the constitutionality of the entire act of 1932. The law is clearly established in New Jersey that, "where the principal object of the statute is constitutional, and the objectionable feature can be excised without substantial impairment of the general purpose, the statute is operative except in so far as it may contravene fundamental law." *St. John The Baptist, etc., Church* v. *Genor,* 121 N. J. Eq. 349, 357, citing numerous cases. It has already been demonstrated that the principal object of Chapter 102, P. L. 1932, is constitutional. The provision preferring holders of matured shares over withdrawing members may be, if objectionable, excised from the act without impairment of the general purpose. The possibility of such excision is susceptible of conclusive demonstration, for the reason that, subsequent to 1932, the particular provision was eliminated by the legislature by amendment, and the law, as it now stands, may

be found in R. S. 17:12-53. The building and loan association structure, as it exists in New Jersey, may be preserved through the medium of modifying the right to sue, without preferring any class of members over another class. In view of the law of the State of New Jersey, there is no foundation for invalidating the entire act should the particular provision be held invalid.

Chapter 102, Laws of 1932, contains a definition of the word "receipts". The prior law (Section 52, Chapter 65, P. L. 1925) contained no such definition. It is obvious that, if the total receipts were to be applied in satisfaction of withdrawal demands, associations would soon find themselves in a position where they would be without funds to carry on normal business operations. It would be impossible to reserve against contingencies. No funds would be available for the payment of taxes on property acquired. The definition includes what normally accounts for the greater part of monthly receipts, and what would normally be sufficient to pay withdrawal demands. There is, furthermore, no hint or suggestion in the record that the definition of the word "receipts" has resulted in prejudice to the appellant, or to any other member of the respondent. There is, in New Jersey, a strong presumption in support of the constitutionality of an act of the legislature. That presumption must be rebutted by evidence adduced by the party attacking the statute. See *Hopper* v. *Stack*, 69 N. J. L. 562. In the absence of such evidence, the presumption in favor of the act must stand. And since the record here is barren of any facts in opposition to the presumption, the point of attack may not be maintained. It is submitted that the definition, as enacted in Chapter 102, P. L. 1932, violates no law, and infringes upon no right of the appellant.

It is further submitted that, for the reasons already stated, the case now before this Court is clearly distinguishable from *Treigle* v. *Acme Homestead Association, supra.* The challenged provisions, unlike those of the Louisiana statute, are clearly intended to preserve the assets of the association. They are calculated to preserve solvency, and to protect the interests of continuing and withdrawing members. They are consistent with the fundamental building and loan association concept; namely, mutuality.

Conclusion.

It is respectfully submitted that, for the reasons herein stated, the judgment of the Court below should be affirmed.

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Appendix.

CHAPTER 65, LAWS OF 1925

Section 49

The shares of every such association of this State, or doing business therein, may be withdrawn by the holder at any time, by giving such written notice as may be provided for in the constitution or by-laws, not to exceed thirty days; if the withdrawal be made within the first year, the withdrawal value of the shares withdrawn shall be not less than the sum of the subscription or dues paid on such shares, less a proportionate share of any loss sustained by such association; after the first year a reasonable share of the profits less unpaid fines shall be included in the withdrawal value; in case such shares are pledged as collateral security for the repayment of a loan made thereon by such association, the amount of such loan shall be deducted from such withdrawal value and the difference only paid to such member; amounts paid for salaries, commissions and other current expenses shall not be considered losses within the meaning of this section.

CHAPTER 65, LAWS OF 1925

Section 52

Withdrawals from any such association shall be paid in the order in which the notices thereof shall have been received, but not more than one-half of the receipts of any one month shall be required to be used for the payment of withdrawal claims, without the consent of the board of directors, until the oldest of such claims then unpaid shall have been on file for a period of six months; but in no case shall payment be postponed for a period longer than six months from the date of such notice, and any member who has given the said notice may sue for and recover the withdrawal value of his shares in any such association in any

court of competent jurisdiction, if the same is not paid in six months from the date of the giving of said notice of withdrawal.

CHAPTER 102, LAWS OF 1932

52. Payment of withdrawals.

Withdrawals from any such association shall be paid in the order in which the notices thereof shall have been received, but not more than one-half of the total receipts of any such association in any month, as income or investments authorized by section twenty-six hereof, dues on shares pledged with such association to secure loans authorized by paragraphs II and V of section twenty-six hereof and repayment of loans authorized by paragraphs II and V of section twenty-six hereof shall be required to be used for the payment of withdrawals without the consent of the board of directors; provided, however, that if, in any one month the funds of the association required to be available for the payment of withdrawals together with any other funds made available for such purpose by its board of directors, are at any time insufficient for the payment of all withdrawals which have been requested, then the right of any withdrawing member to priority of payment of the withdrawal value of his shares in the aforesaid order, shall be only to the extent of five hundred dollars in any one month and if all withdrawing members have received payments in full or on account of their withdrawals to the extent of five hundred dollars in any one month and there is then a balance of such funds available for the payment of withdrawals then said order of priority of payment, to the extent of five hundred dollars shall continue to apply until such balance is exhausted; and no withdrawals shall be paid if the funds available for the payment of matured shares are insufficient to pay all matured shares, the payment of which has been requested within thirty days after maturity; and members who have thus requested payment of their matured shares shall have a right to such payment

prior to the rights of members who have requested payment of the withdrawal value of their shares. A member who has filed a notice or request for withdrawal shall not have the right to sue any such association to recover the withdrawal value of his shares or such part thereof as may not be paid, so long as the funds in the treasury of such association are applied as required herein.

2. This act shall take effect immediately.

Approved April 22, 1932.

R. S. 1: 1-11

The repeal, by the enactment of the Revised Statutes of any act or part of any act, shall not in any way affect, impair or invalidate any act done or right or limitation vested or accrued, or any bonds issued, or taxes or assessments of any kind levied or imposed, or any tax sale had, or in any way annul, invalidate, take away, impair, limit, disturb or affect any right, title, estate, privilege, immunity or power or conveyance in, to or of either real or personal property, acquired, given, conferred, had or made under or by virtue of, or validated by, any act or part of any act so repealed.

R. S. 17: 12-53

Maturities and withdrawals shall be paid in the manner and subject to the limitations provided herein.

a. Maturities shall be paid in the order in which they become due except as provided herein and withdrawals shall be paid in the order in which notices of withdrawal shall have been filed except as provided herein; and

b. The maturities of any one month shall be paid before the maturities of subsequent months; and

c. One-third of the net receipts of any such association in each fiscal month shall be made available so far as necessary for the payment of maturities or for the establishing of maturity reserves and another one-third of the net

receipts of any such association in each fiscal month shall be made available so far as necessary for the payment of withdrawals; and the words "net receipts," as used in this section, shall be construed to mean the moneys, other than borrowed moneys, received by any such association less moneys used for operating expenses, moneys used to pay creditor obligations, moneys used for the conservation, preservation or protection of the property and assets of such association, and moneys reserved for any of such purposes; and

d. If at the end of any fiscal month the funds of any such association required to be made available for the payment of withdrawals, together with such other funds, if any, made avaliable for such purpose by the board of directors, shall be insufficient for the payment of all withdrawals then due and payable, the board of directors of such association shall, so far as possible, pay out of such funds, on account of the sum due to each member who has filed notice or notices of withdrawal, without regard to the fact that such notice or notices shall have been filed by such member on more than one share account, in the order in which such notices shall have been filed, the sum of fifty dollars or the balance due to such member, whichever is less and, if the available funds shall not thereby be exhausted or become inadequate, shall, so far as possible, again pay on account of the sum due to each such withdrawing member, in said order, the sum of fifty dollars or the balance due to such member, whichever is less, and shall repeat the process until the available funds shall become inadequate or exhausted; and subsequent available funds, when available, shall be applied to the payment of then existing withdrawal obligations in the same manner beginning with the withdrawal of the member next following the one on whose account the last such payment was made; and, in the event that such member shall have filed more than one notice of withdrawal, his place in the order of payment shall be as of the date and time of the first notice filed by him; and

e. No member to whom any such association shall be obligated for the payment of any maturity or withdrawal shall have the right to bring suit against such association to recover the maturity or withdrawal value of his shares or any part thereof so long as the funds of such association shall be applied as required by this section; and

f. The board of directors of any such association shall have the right, in its discretion, to make available additional funds other than those required in paragraph "e" of this section for the payment of maturities and withdrawals; but no more than one-third of the net receipts as defined in said paragraph "e" shall be used for the payment of withdrawals while maturities remain unpaid. Borrowed moneys shall not be used for the payment of withdrawals while maturities remain unpaid.

R. S. 17: 12-67

The commissioner may forthwith take possession of the property and business of the association and retain such possession until the property and business of the association shall be returned to the management of its board of directors, or its affairs be finally liquidated as herein provided. On taking possession of the property and business of any such association, the commissioner may continue the operation of the business of the association until its property and business shall be returned to the management of the board of directors of the association, or such association shall merge or consolidate with another association, or until liquidation of the association shall commence, as hereinafter provided.

R. S. 17: 12-65

When it appears to the commissioner that the interests of the creditors or shareholders of an association are being jeopardized because the association has violated its charter or a law of this state, or is conducting its business in an unsafe or unauthorized manner, or if the association re-

fuses to submit its books, papers and concerns to the inspection of the commissioner or an examiner appointed by him, or if an officer or director refuses to be examined on oath regarding the affairs of the association, or if the association suspends payment of its obligations, or, if an examination or report provided for by this chapter, the commissioner has reason to conclude that the association is in an unsound or unsafe condition to transact business, or that it is insolvent, or that it is unsafe or inexpedient for it to continue business, or if the association neglects or refuses to observe an order of the commissioner issued pursuant to section 17:12-64 of this title, he may, if the association is of another state, revoke and cancel its authority to do business in this state, and if the association is incorporated under the laws of this state, proceed in the manner provided by sections 17:12-66 to 17:12-80 of this title.